

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE  
August 15, 2006 Session

**STATE OF TENNESSEE v. DANNY L. DAVIS**

**Direct Appeal from the Criminal Court for Greene County  
No. 05CR099 James E. Beckner, Judge**

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**No. E2005-02301-CCA-R3-CD - Filed February 20, 2007**

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The defendant, Danny L. Davis, was convicted of vehicular homicide in the Criminal Court for Greene County. He was sentenced as a Range I, standard offender to six years in the Tennessee Department of Correction. On appeal, he raises the following six issues for review: (1) the trial court erred by failing to grant his motion of acquittal when the State failed to show time of death or cause of death through medical testimony; (2) the trial court erred in overruling his objection to the State's opinion testimony regarding the speed of the defendant's vehicle at the time of the accident; (3) the trial court erred in failing to grant a mistrial regarding the State's opinion testimony; (4) the trial court erred in denying the defendant's motion in limine to prohibit any testimony regarding the purchase of beer prior to the accident where consumption of alcohol was not an element of the alleged crime; (5) the trial court erred in using factors not submitted to the jury in determining the defendant's sentence; and (6) the evidence was insufficient to support a finding of guilt for vehicular homicide. After careful review, we find no error exists and affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which ALAN E. GLENN, J., joined. GARY R. WADE, P.J., not participating.

William Louis Ricker and Kim C. Miller, Greeneville, Tennessee, for the appellant, Danny Lloyd Davis.

Paul G. Summers, Attorney General and Reporter; Leslie E. Price, Assistant Attorney General; C. Berkeley Bell, District Attorney General; and Amber DePriest and Eric D. Christiansen, Assistant District Attorneys General, for the appellee, State of Tennessee.

## OPINION

### Facts and Procedural History

The underlying events arose from a motor vehicle accident in which a car driven by the defendant collided with a Northeast Tennessee Transportation van. As a result, a passenger in the defendant's car was killed.

L. J. Ottinger, the first witness to testify, was a passenger in the Northeast Tennessee Transportation van. He testified that he rode the van for four years to get to and from work. He said that he boarded the van and sat in the seats behind the driver. He testified that he put on his seat belt and that the driver proceeded toward the roadway. He said that the driver stopped to check traffic and, after stopping, proceeded to turn left. He said the collision occurred, and the van turned over on the driver's side and rolled. He said he was still strapped into his seat when the van came to rest. He heard the driver radio for help and then lost consciousness. He was assisted from the van by the paramedics, and the driver had to be cut out of the van.

April Jenkins was called as the next witness. She testified that there were a number of people at her home on the evening prior to the accident, including both the defendant and the decedent. She testified that it was late in the evening when they arrived and that everyone was drinking alcohol and, specifically, beer. She said that she did not see the defendant drinking. She insisted that the group leave and said that the defendant was driving when they departed.

Richard Dixon testified that he was riding with his father on a highway near the place of the accident when they were passed by a car traveling at a high rate of speed. He stated that he was traveling at fifty-five miles per hour and that the car passed them quickly. He said that the vehicle was a light colored, four-door Pontiac and that it was being driven recklessly. On cross-examination, he testified that he previously told detectives that his car was traveling at fifty or fifty-five miles per hour.

Next, Darryl Slagel, Jr. testified that he was a truck driver for Brenntag Mid-South at the time of the accident and recalled that, just seconds before the crash, he heard a car that sounded like it was racing down Pottertown Road. He called 911 after he saw the wreck. He testified that the car was exceeding the posted speed limit.

The next witness to testify was Ray Crum, medical investigator for Greene County. He testified that his job was to investigate deaths outside of medical facilities, including deaths resulting from auto accidents. He said he was called to this scene and found a full-size van laying on its side and a small car sitting nearby. He testified that there was no one in the van when he arrived but that there was a body in the car on the passenger side. He identified the body by a driver's license. He found the body pinned between the dash of the car and the rear of the seat with its arm and shoulder on the dash and through the windshield. He checked the body for a pulse and found neither a pulse nor any breath sounds. He pronounced the decedent dead at the scene.

On cross-examination, he testified that the defendant was not at the scene when he arrived. He said that all involved in the accident had been transported prior to his arrival. He said that he does not conduct the autopsy nor does he sign the death certificate.

Next, James Christensen, the driver of the van, testified that he was driving the van on the morning of the accident. He said he was picking up Mr. Ottinger to transport him to work on the morning of the accident. He recalled that after Mr. Ottinger fastened his safety belt, he proceeded down the driveway toward Pottertown Road. He said he stopped at the end of the driveway and looked twice in both directions, and then drove onto the roadway. He said he saw the headlights out of the corner of his eye after he turned but had no time to react. He said he could not remember anything else about the accident. On cross-examination, he testified that he did not remember giving testimony at a deposition.

Next, Trooper William T. Fox testified that he has extensive training in accident work and accident reconstruction. He said that, as he approached the scene of the underlying accident, he saw several emergency vehicles, sheriff's department vehicles, and highway patrol units. At the scene, he found a van on its side with front end damage and a four-door vehicle with front end damage in an area off to the right from where he was approaching. There were two other troopers at the scene when he arrived. He testified specifically about the methods used to process the accident scene and to collect data, including the use of a drag sled, which is a device used to determine the drag factor of a portion of the roadway to determine the speed of a vehicle. He said that the van was airborne for approximately twenty-five to thirty feet. He testified that the defendant's car was traveling at approximately eighty-two miles per hour at the time of the accident and that the van was traveling approximately eight miles per hour.

At the conclusion of the trooper's testimony, the State rested its proof. The defendant moved for both a mistrial and judgment of acquittal but was denied on both counts.

The defendant's first witness was Dustin Marlin Davis. He testified that he was present at April Jenkins' home on the night before the accident and recalled that the defendant drank only one or two beers that evening. He testified that he left the home with the victim, the defendant, and another passenger on the morning of the accident. He recalled that the defendant was driving and that the victim was in the passenger seat. He said they were going to the defendant's home to transport his stepson to school before they drank some more and decided what to do. They stopped at a gas station to purchase a twelve-pack of beer before proceeding to Pottertown Road. He said that the defendant had to stop on Pottertown Road because a small dark car cut them off. He testified that a few seconds later, he saw a white blur and they hit the van. He estimated that they were traveling at thirty-five to forty miles per hour at the collision.

On cross-examination, he acknowledged that he had consumed ten or eleven beers on the evening prior to the accident. He said his blood alcohol level was approximately .25. He said that the defendant, his cousin, had maybe two beers around 11:00 p.m. He acknowledged that they had been partying all night and that they were going to continue to party at the defendant's house after

they took his stepson to school. He said the victim was alive and well in the front seat prior to the accident. He testified that he took a Valium earlier that day. He also acknowledged that he had previously been convicted of a crime involving theft. On redirect examination, he testified that the defendant was his third cousin on his father's side.

The next witness was Angela Strange, the defendant's fiancé. She said that she had lived with the defendant eight years. She testified that she was working on Pottertown Road on the day of the accident and that the defendant planned to meet her at 9:00 for her break. When she discovered there had been a wreck, she got permission to walk to the wreck where she saw her car and one of her son's car seats containing blood. She said her children were all safely at home. A few days later, she took a videotape of the speed limit sign located in the area of the accident.

On cross-examination, she testified that she and the defendant had two children together. She also testified that she was not aware of the weight of the vehicle.

The defendant testified in his own behalf. He said he did not work for approximately a year after the accident. He said he was at April Jenkins' home on the night before the accident and acknowledged that he drank a beer and played cards. He said he drank two beers, the last at 11:30 p.m., and that he left at 6:00 a.m. He testified that he stopped at a gas station and that two of his passengers went inside to buy more beer. He took Pottertown Road and, as he was driving, he said he had to stop because two cars cut him off turning into an entrance to a workplace. He claimed that he accelerated normally after stopping and saw the van as he rounded the curve. He said the van accelerated as he turned and hit him. He testified that he did what he could to avoid the van, which was to hit the open field on the other side of the road. He said he turned the vehicle's wheel to the left and the van driver did the same, resulting in the collision. He testified that the van spun its tires when it came out of the driveway. He said he did not remember the impact but could recall waking up and seeing fire coming from under the hood. He said no one was wearing a seat belt. He broke his hip and nose and had cuts on his arms. He said that the fuel injection did not work properly and that it would not run fast.

On cross-examination, the defendant testified that he did not know the speed limit on Pottertown Road. He acknowledged that he had been speeding on the bypass prior to turning onto Pottertown Road. He also said he stopped to allow his passengers to buy more beer even though they were all intoxicated. He acknowledged that he had been convicted of four prior felonies, including three convictions for theft more than \$1000 and one conviction of burglary. He said that he was driving thirty to thirty-five miles per hour at the time of the crash. He also said that, to the best of his knowledge, the victim was alive prior to the crash but that he did not know if he died in the collision.

The final witness to testify was Leighton Sissom, the defendant's accident reconstruction expert. He estimated that the van was traveling about 10.2 miles per hour at the time of the collision and that the defendant's car was traveling about 52.2 miles per hour. He opined that the accident was caused by the van violating the right of way of the defendant.

At the conclusion of their deliberation, the jury concluded the defendant was guilty of vehicular homicide.

### Analysis

#### I. Sufficiency

After reviewing the evidence in a light most favorable to the State, we conclude that a rational trier of fact could have found the essential elements of vehicular homicide beyond a reasonable doubt. Vehicular homicide is defined as “the reckless killing of another by the operation of an automobile . . . [a]s the proximate result of conduct creating a substantial risk of death or serious bodily injury to a person.” T.C.A. § 39-13-213(a)(1). Reckless refers to a person who acts recklessly with respect to circumstances surrounding the conduct or the result of the conduct when the person is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. T.C.A. § 39-11-106(a)(31) (2003). The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under the circumstances as viewed from the accused person’s standpoint. Id.

The testimony adduced at trial was that the defendant was speeding. The van driver testified that he stopped and looked both ways before entering the roadway where the accident occurred. The passenger in the van corroborated the driver’s testimony by testifying that the van came to a complete stop prior to going forward into the roadway. The defendant’s own testimony acknowledged that he had been speeding on a different roadway that morning prior to the accident. A separate witness testified that he was a passenger in a vehicle driving on the road where the accident took place and said that he observed a vehicle which matched the description of the defendant’s vehicle being driven recklessly at a high rate of speed. Yet another witness testified that he heard a vehicle driving down the road “like it was racing.” Additionally, the trooper who investigated the accident said he determined the defendant’s vehicle to have been traveling approximately eighty-two miles per hour prior to impact, while the van was traveling at approximately eight miles per hour. The force of the impact between the two vehicles was so great that it caused the van to go airborne for twenty-five to thirty feet prior to landing on its side.

Based on the foregoing testimony, a rational jury could have found that the defendant was driving in a reckless manner and that the recklessness caused the collision.

The defendant further contends that the State failed to present evidence that there was a death and that the death was a proximate cause of the defendant’s conduct. He specifically contends that the State’s failure to present a doctor’s testimony regarding the victim’s cause of death should have been fatal to the prosecution’s case. The State argues that sufficient evidence was presented to establish that the defendant’s car accident and, specifically, his reckless behavior were the cause of the victim’s death.

The State points to the trial testimony, including that of the defendant, that the victim was alive prior to the accident. The medical investigator responded to the accident and pronounced the victim dead on the scene. The State contends, and we agree, that there was sufficient evidence in the record to establish that the victim's death was the result of the collision caused by the defendant. We have long recognized that circumstantial evidence may be used exclusively to establish guilt. See State v. Pendergrass, 13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999). Our supreme court has stated "[d]eath may be presumed to have been caused by apparent wounds, particularly when there is no suggestion in the record that the deceased died from any other cause than that relied on by the State." Cathey v. State, 235 S.W.2d 601, 602 (1951) (quoting Franklin v. State, 171 S.W.2d 281, 282 (1943))

Here, the victim was alive prior to the collision and was pronounced dead immediately after the collision. The defendant had no alternate explanation for the victim's death. We conclude there was sufficient evidence to show the victim died as a result of the collision. A rational jury could conclude the defendant was guilty of vehicular homicide.

## II. Expert Testimony

The defendant contends that the trooper failed to qualify as an expert and was improperly allowed to testify regarding the speed of the vehicles in the collision. The State argues that the trooper was adequately qualified to testify regarding the respective speeds of the vehicles involved in the accident.

Generally, questions regarding the admissibility, qualifications, relevancy, and competency of expert testimony are entrusted to the discretion of the trial court. State v. Farmer, 66 S.W.3d 188, 207 (Tenn. 2001). A witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise, provided the scientific, technical, or other specialized knowledge will substantially assist the trier of fact to understand the evidence or to determine a fact in issue. Tenn. R. Evid. 702. An expert may base his or her opinion upon facts or data imparted to or perceived by the expert prior to or at a hearing; the facts or data need not be admissible if they are the type of facts or data reasonably relied upon by experts. Tenn. R. Evid. 703. If the underlying facts or data lack trustworthiness, the court will disallow expert testimony based upon them. Id. Evidence and expert testimony regarding scientific theory must be both relevant and reliable before it may be admitted. McDaniel v. CSX Transportation, Inc., 955 S.W.2d 257, 265 (Tenn. 1997).

The trial court has broad discretion in resolving questions concerning the qualifications, admissibility, relevance, and competency of expert testimony. State v. Stevens, 78 S.W.3d 817, 832 (Tenn. 2002). An appellate court should not overturn a trial court's decision in admitting or excluding a proposed expert's testimony unless it finds the trial court abused its discretion. State v. Ballard, 855 S.W.2d 557, 562 (Tenn. 1993). The propriety, scope, manner, and control of the examination of witnesses are within the sound discretion of the trial court. State v. Humphreys, 70

S.W.3d 752, 766-67 (Tenn. Crim. App.2001). Absent an abuse of discretion, we will not interfere with such rulings. State v. Harris, 839 S.W.2d 54, 72 (Tenn. 1992).

The trooper testified that he had attended many training courses pertaining to traffic accident and collision reconstruction. The trial court allowed him to testify regarding the speeds of the vehicles, but not the point of impact. The trial court found that the trooper was qualified to testify about computer analysis to compute pre-impact and post-impact speeds and for using the drag test to determine the respective speeds of the vehicles involved in the crash. The trooper testified that he had twenty-one years of service and had extensive training and experience in accident investigations. His training included the methods used to determine the respective speeds of the vehicles involved in the instant case. Further, the trooper testified about the facts underlying his opinion to support his testimony.

We conclude that no abuse of discretion on behalf of the trial court exists and that this issue lacks merit.

### III. Prosecutor's Comments

The defendant argues that the trial court should have granted a mistrial and alleges that the prosecutor "deliberately and intentionally used information which had been excluded by the trial court, including point of impact data and angles data used in the trooper's calculations." At trial, the defendant objected to the use of this information and moved for a mistrial at the conclusion of the trooper's testimony. The trial court held that the trooper was qualified to testify regarding both the drag test and the computer analysis to determine the pre-impact and post-impact speeds.

The purpose for declaring a mistrial is to correct damage done to the judicial process when some event has occurred which precludes an impartial verdict. State v. Williams, 929 S.W.2d 385, 388 (Tenn. Crim. App. 1996). A mistrial is only appropriate when the trial cannot continue without causing a miscarriage of justice. See State v. McPherson, 882 S.W.2d 365, 370 (Tenn. Crim. App. 1994). For a mistrial to be declared, there must be a "manifest necessity." State v. Robinson, 146 S.W.3d 469, 494 (Tenn. 2004). The decision to grant a mistrial is within the discretion of the trial court, and that decision will not be disturbed on appeal unless there was an abuse of discretion. State v. Reid, 91 S.W.3d 247 (Tenn. 2002).

The State argues that there are three nonexclusive factors which our courts have applied in determining whether a mistrial was necessary after improper testimony was presented to the jury and points to a decision by a panel of this court to support their argument. This court in State v. Lawrence Taylor, No. W2002-00183-CCA-R3-CD, 2003 Tenn. Crim. App. LEXIS 114, at \*11 (Tenn. Crim. App. at Jackson, Feb. 14, 2003), concluded that the three factors were: (1) whether the State elicited the testimony; (2) whether the trial court gave a curative instruction; and (3) the relative strength of weakness of the State's proof. Here, the State did elicit the testimony, but the defendant has not shown how it was improper. The trial court determined the testimony was proper, given the

scope of the trooper's experience and training, and the defendant failed to show that the testimony was improper.

The State argues, and we agree, that the trial court did not abuse its discretion by denying the request for a mistrial because grounds did not exist to grant a mistrial. This issue is without merit.

#### IV. Motion in Limine

The defendant argues that the trial court erred in denying his motion in limine to prohibit testimony regarding the purchase of beer by the occupants of the car prior to the collision. He contends that the jury was prejudiced by the testimony that the defendant stopped the car so his associates could purchase more beer despite the fact they were already intoxicated. The State contends that the motion was properly denied because the testimony was relevant.

Evidence must be relevant and probative to an issue at trial in order to be admissible. State v. McCary, 922 S.W.2d 511, 515 (Tenn. 1996); see also Tenn. R. Evid. 402 (2004). Relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without evidence." Tenn. R. Evid. 401 (2004). However, even relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Tenn. R. Evid. 403 (2004). There is a significant burden of persuasion on the party seeking to exclude the otherwise admissible evidence.

The defendant has failed to show that the trial court abused its discretion in denying the motion in limine to exclude the information that the defendant stopped so his passengers could purchase beer. The information was relevant, and the trial court did not abuse its discretion.

#### V. Sentencing

The defendant argues that the trial court erred in sentencing the defendant by using factors not submitted to the jury for determination beyond a reasonable doubt. The defendant specifically argues that the trial court enhanced his sentence in violation of the holding in Blakely v. Washington, 542 U.S. 296 (2004). The State contends that the trial court properly sentenced the defendant to six years in confinement and argues that the case the defendant relied on is no longer the applicable law in Tennessee. We agree.

In State v. Gomez, 163 S.W.3d 632 (Tenn. 2005), our supreme court held that Tennessee's sentencing structure does not conflict with the holdings of Blakely and, further, that the Blakely decision held that, for the purpose of sentence enhancement, prior convictions did not have to be proven by a jury. 542 U.S. at 301. Therefore, the trial court acted properly and the defendant's argument is without merit.



Here, the defendant has not shown that the trial court did not follow the statutory sentencing procedure. The record reflects that the trial court was thorough in following the sentencing procedure and, absent a showing that it acted improperly, we may not modify the defendant's sentence. Therefore, we affirm the sentence of the defendant.

#### Conclusion

Based on the foregoing and the record as a whole, we affirm the judgment of the trial court.

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JOHN EVERETT WILLIAMS, JUDGE